

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

LOGAN ROBINSON

§

V.

§

CASE NO. 1:22-cv-1216

SUNPATH, LTD

§

§

§

DEFENDANT'S NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Pursuant to 28 U.S.C. § 1331, SunPath, Ltd. ("SunPath"), Defendant, files this Notice of Removal of an action pending in the Justice Court, Precinct One, of Travis County, Texas, Cause No. J1-CV-22-003608, removing the case to the United States District Court for the Western District of Texas, Austin Division, and would respectfully show the Court as follows:

Background

1. Plaintiff Delores Austin, ("Plaintiff") commenced an action in the Justice Court, Precinct One, of Travis County, Texas ("State Court Action"), on October 20, 2022. See Exhibit A. Plaintiff's Original Petition incorporates an allegation claiming SunPath violated Texas Business and Commerce Code § 305.053.

2. SunPath filed its Original Answer on November 2, 2022, asserting a general denial and various defenses. *See* Exhibit B.

3. Because SunPath is alleged to have violated Texas Business and Commerce Code § 305.053, which incorporates the provisions of 47 U.S.C. Section 227. Because this claim is, at its core, raising questions based in federal law, this case is removable.

Removal is Timely

4. SunPath was served on October 24, 2022. *See Exhibit C.* Pursuant to 28 U.S.C. §§ 1446(b) and 1446(c)(1), this Notice of Removal is timely, as it is filed within 30 days of the service of the Petition on the most recent defendant and is filed within one year of the filing of the lawsuit.

Venue is Proper

5. The Austin Division of the United States District Court for the Western District of Texas is the appropriate court for filing a Notice of Removal from the Justice Court, Precinct One, of Travis County, Texas, because it is the court for the district and division embracing the place where the State Court Action is pending. *See 28 U.S.C. § 1441(a).*

Federal Question

6. The underlying State Court Action is one over which this Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331. It may be removed to this Court by SunPath as the claim refers to a violation of Texas Business and Commerce Code § 305.053. *See Exhibit A.* While on its face a state court matter, the text of the law states: "A person who receives a communication that violates 47 U.S.C. § 227, a regulation adopted under that provision, or Subchapter A may bring an action in this state against the person who originates the communication." The reference to 47 U.S.C. § 227 acts as the core of this state law and causes the invocation of Section 305.053 to depend on whether or not a violation of said federal law occurred. Thus, Section 305.053 effectively raises a federal question, which, pursuant to 28 U.S.C. § 1331, allows the subject-matter jurisdiction to fall onto this Court.

7. Accordingly, this case is removable to the United States District Court for the Western District of Texas, Austin Division.

Other Matters

8. The following documents required by 28 U.S.C. § 1446(a) are attached to this Notice of Removal:

- a. Pleadings asserting causes of action, e.g., Plaintiff's Original Petition (*see Exhibit A*);
- b. SunPath's Answer (*see Exhibits B*);
- c. All executed process in the case (*see Exhibit C*);
- e. An index of matters being filed (*see Exhibit D*);
- f. A list of all counsel of record, including addresses, telephone numbers and parties represented (*see Exhibit E*); and
- g. The docket sheet (*see Exhibit F*).

9. As required by 28 U.S.C. § 1446(d), on this date written notice of the filing of this Notice of Removal has been given to Plaintiff and a copy of this Notice of Removal has been filed with the Clerk of the Justice Court, Precinct One, of Travis County, Texas.

10. No admission of fact, law, or liability is intended by this Notice of Removal, and SunPath expressly reserves all defenses, affirmative defenses, and motions.

[Signature on following page.]

Respectfully submitted,

By: /s/*Jason Wagner*

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ATTORNEYS FOR DEFENDANT

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Defendant's Notice of Removal** was served, pursuant to Federal Rule of Civil Procedure 5, via electronic service, on this the 17th day of November 2022, to:

Logan Robinson
2933 E 13th Street
Austin, Texas 78702
(*Plaintiff*)

/s/*Jason Wagner*
Jason Wagner